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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 492

RUSSELL R. KNOWLES AND SYLVIA KNOWLES, ET AL.,
Petitioners,

v.

WAR DAMAGE CORPORATION, an instrumentality of the United States of America, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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PRESS OF BYRON S. ADAMS, WASHINGTON D. C.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners RUSSELL R. KNOWLES and SYLVIA KNOWLES, ET AL., hereby respectfully request this honorable court to issue a writ of certiorari to the United States Court of Appeals for the District of Columbia to review the decision and judgment of that court, which in turn affirmed a judgment of the District Court of the United States for the District of Columbia, dismissing the complaint herein with prejudice.

OPINIONS BELOW.

The opinion of the Court of Appeals (R. 34-39) is unreported. The District Court did not hand down an opinion (R. 32).

JURISDICTION.

The judgment of the Court of Appeals was entered on October 4, 1948 (R. 40).

The jurisdiction of this Court is invoked under Title 28 U. S. C., Section 1254.

QUESTIONS PRESENTED.

(1) Is a suit against the War Damage Corporation, a corporate instrumentality of the United States, created to perform a public function pursuant to Sections 5d and 5g of the Reconstruction Finance Corporation Act (Title 15 U.S.C., Sections 606b and 606b-2), a suit against the United States?

(2) Does the Municipal Court for the District of Columbia have exclusive jurisdiction of an action brought in the District of Columbia against the United States where the amount claimed is less than $3,000.00?

(3) Does the United States District Court for the District of Columbia have jurisdiction of an action brought in the District of Columbia against the United States where the amount claimed is less than $3,000.00?

(4) Does the Municipal Court for the District of Columbia have exclusive jurisdiction of an action in the District of Columbia against the United States, founded upon the Reconstruction Finance Corporation Act, (Title 15 U.S.C., Sections 606b, 606b-2) brought to determine the rights to a fund in the hands of a corporate instrumentality of the United States, where the amount claimed is less than $3,000.00?

(5) Does the United States District Court for the District of Columbia have jurisdiction of an action in the

District of Columbia against the United States, founded upon the Reconstruction Finance Corporation Act (Title 15 U.S.C., Sections 606b, 606b-2) brought to determine the rights to a fund in the hands of a corporate instrumentality of the United States, where the amount claimed is less than $3,000.00?

STATUTES AND REGULATIONS INVOLVED.

There are no regulations involved, but the construction of the following statutes bear directly on the issues raised by this petition:

1. Section 4 of the Municipal Court Act of 1942 (Title 11 District of Columbia Code, Section 755).
2. Reconstruction Finance Corporation Act, Section 5d (Title 15 U.S.C., Sec. 606b).
3. Reconstruction Finance Corporation Act, Section 5g (Title 15 U.S.C., Sec. 606b-2).
4. Section 1346 of Title 28 of the United States Code.
5. Section 305 of Title 11, of the District of Columbia Code.
6. Section 1349 of Title 28, of the United States Code.

The relevant parts of the above statutes are hereinafter set forth in the appendix to this petition, *infra*, at page 13, *et seq.*

STATEMENT.

The petitioners, who are the holders of policies of insurance issued by respondent, War Damage Corporation, instituted this action on behalf of themselves, and all others similarly situated, against respondent, a corporation created and wholly owned by Reconstruction Finance Corporation under Section 5d of the Reconstruction Finance Corporation Act (Title 15 U.S.C., Sec. 606b), with powers

as defined by Section 5g of that Act (Title 15 U.S.C., Sec. 606b-2) (R. 1-6).

By this action petitioners, on behalf of all of such policyholders, seek to obtain for their benefit a fund of moneys in possession of respondent and not needed for the performance of its charter functions (R. 1, 5-6). This "surplus", amounting to approximately $250,000,000, is the remaining part of a fund in excess of $300,000,000 collected by the respondent from more than 6,000,000 owners of private property throughout the United States (R. 5-6). The fund was made up of so-called "premiums" on "policies" of war damage insurance issued by respondent to furnish certain protection against loss to the insured property caused by enemy action during World War II (R. 5).

Petitioners allege that the "premiums" so collected by the respondent vastly exceeded the total of all direct and contingent claims against respondent on all of its outstanding policies (all of which have long since expired) (R. 5) and that the "surplus" so created is equitably the property of the holders of the "policies" who contributed the "premiums" and should be returned to them pro rata, after a proper accounting by respondent (R. 4, 6). For purposes of the respondent's motion to dismiss in the District Court, respondent did not deny any of the fundamental facts, but contended that this "surplus" is property of the United States and should be covered into the Treasury of the United States as its general funds and that petitioners and other policyholders have no interest therein, legal or equitable.

Respondent moved in the District Court for dismissal of the complaint on the grounds that the District Court did not have jurisdiction of the action and that the complaint did not state a cause of action (R. 31). In the alternative, the respondent moved for summary judgment. After oral argument, the District Court, without opinion, dismissed the complaint with prejudice (R. 32).

Petitioners appealed to the Court of Appeals for the District of Columbia which, on October 4, 1948, affirmed the judgment of the District Court (R. 40).

DECISION OF THE COURT OF APPEALS.

The Court of Appeals held that the District Court did not have jurisdiction of the action on the grounds that the Municipal Court for the District of Columbia has exclusive jurisdiction of civil actions brought in the District of Columbia where the amount of the claim is less than $3,000.00, and that the charter of the War Damage Corporation provided that it should have power "to sue and be sued in any court of competent jurisdiction", citing *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381 (R. 38).

Petitioners contended below[1] that the case at bar was a suit against the United States and, therefore, the District Court had concurrent jurisdiction under Title 28 U.S.C., Section 1346 (a)(2), even though the amount of the claim was less than $3,000.00. Petitioners have never contended that the Municipal Court has no jurisdiction; they have always contended only that the District Court has jurisdiction. Respondent conceded[2] that in the event the action was one against the United States, the District Court had at least concurrent jurisdiction.

The Court of Appeals did not clearly state whether or not it regarded the action as one against the United States. The Court said (R. 38):

> "We find no merit in appellants' second contention on this point, that the suit is against the United States and, therefore, cannot be brought in the Municipal Court."

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[1] The majority of the opinion of the Court of Appeals dealt with the question of whether or not the instant case could be regarded as a class action in order that the amount involved would exceed $3,000.00—a point which was not argued by petitioners either on brief or on oral argument in the court below.

[2] Brief of Appellee (respondent here) in Court of Appeals, p. 7.

The court went on to say that the charter of respondent, War Damage Corporation, clothed it with the power to "sue and be sued in any court of competent jurisdiction", and that in any event, the matter was governed by *Keifer & Keifer* v. *Reconstruction Finance Corporation*, 306 U. S. 381 (R. 38).

The decision of the Court of Appeals must therefore have been based either upon the ground that the action was not one against the United States, or that, even if it were, the Municipal Court had exclusive jurisdiction.

After disposing of the appeal upon the jurisdictional question, the court below added *obiter* (R. 38) that "since further proceedings may be had in another Court in this jurisdiction upon this claim, and since the point has been so vigorously and exhaustively argued here, we add a further observation". The court then stated by way of dictum (R. 38) that petitioners had failed to establish that the War Damage Corporation was anything different than a stock insurance company, and that, therefore, the profits of such a company, upon liquidation, should be retained by the Government. The court made it entirely clear, however, (R. 38) that because it disposed of the appeal upon the question of jurisdiction, it did not meet the issue on the merits. Petitioners therefore have no alternative but to seek certiorari solely upon the jurisdictional point.

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred in holding, either:

(1) that, for the purpose of determining the jurisdiction of the District Court of the United States for the District of Columbia, a suit against the War Damage Corporation, a corporate instrumentality of the United States, is not a suit against the United States; or, in the alternative,

(2) that if a suit against the War Damage Corporation is a suit against the United States, nevertheless the Municipal Court for the District of Columbia has

exclusive jurisdiction of such an action where the damages claimed are less than $3,000.00.

REASONS FOR GRANTING THE WRIT.

1. If the Court of Appeals held that the case at bar is not an action against the United States, the decision is in direct conflict with the decision of the Court of Appeals for the Second Circuit in *Defense Supplies Corporation* v. *United States Lines Co.*, 148 F. (2d) 311 (CCA 2, 1945). That court there held that Defense Supplies Corporation which, like respondent, is a corporate instrumentality of the United States, created and wholly owned by the Reconstruction Finance Corporation, was the United States for the purpose of determining whether that action was a suit by the United States.

The decision of the Court of Appeals is in conflict with the clear implication of the decision of this Court in *Cherry Cotton Mills, Inc.* v. *United States*, 327 U. S. 536. This Court there held that the United States, in an action brought against it for a tax refund, could counter-claim for moneys owed to the Reconstruction Finance Corporation. The articulate premise of the decision was that a debt owed to a Government corporation is fundamentally a debt owed to the United States. Mr. Justice Black, stated at page 539:

> "That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by the Government to accomplish purely Governmental purposes. *Inland Waterways Corporation* v. *Young*, 309 U. S. 517, 524, 84 L. Ed. 901, 906, 60 S. Ct. 646."

The Court of Appeals, in relying on *Keifer & Keifer* v. *Reconstruction Finance Corporation*, *supra*, entirely misinterpreted that decision. The question there was whether the Regional Agricultural Credit Corporation, established by the Reconstruction Finance Corporation, was the beneficiary of the immunity of the United States from suit be-

cause of Congressional silence in the Enabling Act. This Court held that immunity did not attach because of the general intent of Congress, the specific language of the Reconstruction Finance Corporation Act, and the improbability of Congressional intent to distinguish this group of governmental corporations from all others.

The whole opinion is based on the major premise that the action was a suit against the United States.

That a corporate instrumentality of the United States is, in fact, the United States itself has been consistently recognized. *United States Shipping Board Emergency Fleet Corporation* v. *Western Union Telegraph Company*, 275 U. S. 415; *Southern Pacific Co.* v. *Reconstruction Finance Corporation*, 161 F. (2d) 56, 58-60, (CCA 9, 1947).

Title 11 District of Columbia Code, Section 305, provides that the District Court for the District of Columbia shall "possess the same powers and exercise the same jurisdiction as the District Courts of the United States, and shall be deemed a Court of the United States."

Title 28 of the United States Code, Section 1346(a)(2), reads as follows:

> "(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:
>
> • • •
>
> (2) any other civil action or claim against the United States, not exceeding $10,000.00 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an Executive Department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

It is clear that an action against the War Damage Corporation is such a suit against the United States and that, therefore, the District Court of the United States for the District of Columbia has jurisdiction of the action. Moreover, such is the clear implication of Title 28 United States Code, Section 1349, which reads as follows:

> "The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock."

The question of the jurisdiction of the District Courts to entertain actions brought against the corporate instrumentalities of the United States is obviously an important one, requiring clarification by this Court.

(2) The decision of the Court of Appeals, in holding that the Municipal Court for the District of Columbia has exclusive jurisdiction of an action against the United States and that the District Court has no jurisdiction, on the ground that the amount of the claim is less than $3,000.00, is clearly a misinterpretation of the Municipal Court Act. Moreover, the decision involves an important question as to the jurisdiction of the courts of the District of Columbia and is in direct conflict with the decision of the District Court in *United States* v. *Sheriff Motor Co.*, 63 F. Supp. 685 (D. D. C., 1943), which the Court of Appeals did not even consider.

The function of the Municipal Court is historically limited to local litigation, as is clear from the legislative history of the Municipal Court Act of 1942. In the House Report, Mr. Randolph stated that one of "the principal features of the bill" was to increase the civil jurisdiction of the Municipal Court to $2,000.00 (the figure was subsequently raised to $3,000.00) with the following clearly expressed purpose:

> "This should substantially lighten the burden of the United States district court by relieving it of non-Federal or purely local litigation which, in the past, has constituted more than one-third of the verdicts returned in the district court".[3]

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[3] Page 2, Report No. 1236, to accompany H. R. 5784, from the Committee on the District of Columbia, October 9, 1941. House of Representatives, 77th Cong. 1st Sess.

In the comparable Senate Report, Mr. McCarran made the identical statement.[4]

The clear delineation which Congress intended between jurisdiction of local matters and jurisdiction of Federal matters in the District of Columbia is confirmed by the unambiguous language of the Federal Tort Claims Act, Title 28 U. S. C., Section 1346(b). That Statute specifically grants to the district courts exclusive jurisdiction of civil actions on claims against the United States in certain designated categories irrespective of the amount involved. Clearly, therefore, a claim under Section 1346(b), even though the amount involved were only $50.00, could not be entertained by the Municipal Court for the District of Columbia but would have to be brought in the District Court.

It is inconceivable that Congress would have so provided in 1946 for the vast mass of tort litigation against the United States if in 1942 it had already provided that all actions under $3,000.00 against the United States, then allowable, were to be brought in the Municipal Court.

To interpret the Municipal Court Act as giving the Municipal Court exclusive jurisdiction of all civil actions brought in the District of Columbia against the United States where the amount in question is less than $3,000.00, even though a Federal statute or other Federal question were involved, would not only deprive the District Court of the District of Columbia of the jurisdiction conferred by Section 1346, but would also oust the Court of Claims of the jurisdiction conferred upon it and the United States Tax Court of the jurisdiction conferred upon it—whenever the matter in demand was less than $3,000.00. Such an interpretation should not be permitted to stand. The decision of the Court of Appeals has raised so many uncertainties as to the jurisdiction of the courts of the District of Columbia as to require clarification by this Court.

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[4] Page 3, Calendar No. 1152, Report No. 116, to accompany H. R. 5784, from the Committee on the District of Columbia, February 23, 1942, Senate, 77th Cong. 2nd Sess.

The mere fact that the charter of the War Damage Corporation authorizes it to sue or be sued in any court of competent jurisdiction—even though the Municipal Court may have concurrent jurisdiction by virtue of the Municipal Court Act—cannot serve to oust the District Court of its statutory jurisdiction.

The District Court for the District of Columbia held in *United States* v. *Sheriff Motor Co., supra,* that it had exclusive jurisdiction in an action where the United States is plaintiff. The Municipal Court and the Municipal Court of Appeals subsequently held only that they had "jurisdiction". No assertion of "exclusive jurisdiction" was made. *United States* v. *Ridgley,* 73 Wash. L. Rep. 1069, 1071 (Mun. Ct. D. C., 1944) affirmed sub. nom. *Ridgley* v. *United States,* 45 A. 2nd 475 (Mun. Ct. of Appeals, D. C., 1945). The court below not only disregarded these decisions entirely but it failed to clarify the veil of uncertainty which they created.

Petitioners would be willing to concede for the purpose of argument that the Municipal Court for the District of Columbia does have jurisdiction of this action, but the Court of Appeals clearly erred in holding that the Municipal Court Act plus the charter of the War Damage Corporation served to oust the District Court of its jurisdiction, and to vest exclusive jursdiction in the Municipal Court.

CONCLUSION.

Petitioners respectfully submit that the decision of the Court of Appeals—in either aspect—is so clearly erroneous that it cannot be permitted to stand. The court was in error in holding either that this action against the War Damage Corporation is not one against the United States, or that, if it is, the District Court has no jurisdiction. The effects of the decision below in ousting the District Court of jurisdiction and conferring exclusive jurisdiction upon

the Municipal Court, if permitted to stand, are so far reaching as imperatively to require review by this Court.

WHEREFORE your petitioners respectfully pray that a Writ of Certiorari to the Court of Appeals for the District of Columbia be granted.

Respectfully submitted,

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December 30, 1948.

APPENDIX.

Municipal Court Act of 1942, Section 4 (Section 755, Title 11 of the District of Columbia Code).

"The (Municipal) Court and each judge thereof shall have and exercise the same powers and jurisdiction as were heretofore had or exercised by the Police Court of the District of Columbia or by the Municipal Court of the District of Columbia . . . and in addition the said court shall have exclusive jurisdiction of civil actions, including counterclaims and crossclaims, in which the claimed value of personal property, or the debt or damages claimed, exclusive of interest, attorneys' fees, protest fees, and costs, does not exceed the sum of $3,000 and, in addition, shall also have exclusive jurisdiction of such actions against executors, administrators and other fiduciaries . . ."

Reconstruction Finance Corporation Act, Section 5(d) (Title 15 U. S. C., Sec. 606b).

"In order to aid the Government of the United States in its national-defense program, the Corporation is authorized—

* * *

"(3) When requested by the Federal Loan Administrator, with the approval of the President, to create or organize, at any time prior to July 1, 1943, a corporation or corporations, with power (a) to produce, acquire, carry, sell, or otherwise deal in strategic and critical materials as defined by the President; (b) to purchase and lease land, purchase, lease, build, and expand plants, and purchase and produce equipment, facilities, machinery, materials, and supplies for the manufacture of strategic and critical materials, arms, ammunition, and implements of war, any other articles, equipment, facilities, and supplies necessary to the national defense, and such other articles, equipment, supplies, and materials as may be required in the manufacture or use of any of the foregoing or otherwise necessary in connection therewith; (c) to lease, sell or otherwise dispose of such land, plants, facilities, and machinery to others to engage in such manufacture; (d) to engage in such manufacture itself, if the President finds that it is necessary for a Government agency to engage in such manufacture;

(e) to produce, lease, purchase, or otherwise acquire railroad equipment (including rolling stock), and commercial aircraft, and parts, equipment, facilities, and supplies necessary in connection with such railroad equipment and aircraft, and to lease, sell or otherwise dispose of the same; (f) to purchase, lease, build, expand, or otherwise acquire facilities for the training of aviators and to operate or lease, sell, or otherwise dispose of such facilities to others to engage in such training; and (g) to take such other action as the President and the Federal Loan Administrator may deem necessary to expedite the national-defense program, but the aggregate amount of the funds of the Reconstruction Finance Corporation which may be outstanding at any one time for carrying out this clause (g) shall not exceed $200,000,000 * * *"

Reconstruction Finance Corporation Act, Section 5g (Title 15 U. S. C., Sec. 606b-2).

(a) The Reconstruction Finance Corporation is hereby directed to continue to supply funds to the War Damage Corporation, a corporation created pursuant to sections 606b and 609j of this title; and the amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this subsection. Such funds shall be supplied only upon the request of the Secretary of Commerce, with the approval of the President, and the aggregate amount of the funds so supplied shall not exceed $1,000,000,000. The Reconstruction Finance Corporation is authorized to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable. Such protection shall be made available through the War Damage Corporation on and after a date to be determined and published by the Secretary of Commerce which shall not be later than July 1, 1942,

upon the payment of such premium or other charge, and subject to such terms and conditions, as the War Damage Corporation, with the approval of the Secretary of Commerce, may establish, but, in view of the national interest involved, the War Damage Corporation shall from time to time establish uniform rates for each type of property with respect to which such protection is made available, and, in order to establish a basis for such rates, such Corporation shall estimate the average risk of loss on all property of such type in the United States. Such protection shall be applicable only (1) to such property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, (2) to such property in transit between any points located in any of the foregoing, and (3) to all bridges between the United States and Canada and between the United States and Mexico: PROVIDED, That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance. The War Damage Corporation, with the approval of the Secretary of Commerce, may suspend, restrict, or otherwise limit such protection in any area to the extent that it may determine to be necessary or advisable in consideration of the loss of control over such area by the United States making it impossible or impracticable to provide such protection in such area.

(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage. Jan. 22, 1932, c. 8, § 5g, as added Mar. 27, 1942, c. 198, § 2, 56 Stat. 175.

Title 28 U. S. C., Section 1346.

"(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

"(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws; even if the claim exceeds $10,000 if the collector of internal revenue by whom such tax, penalty or sum was collected is dead or is not in office as collector of internal revenue when such action is commenced;

"(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

"(b) Subject to the provisions of chapter 173 of this title, the district courts, together with the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

"(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

"(d) The district courts shall not have jurisdiction under this section of:

(1) Any civil action or claim for a pension;

(2) Any civil action to recover fees, salary, or compensation for official services of officers in the United States."

Title 11 District of Columbia Code, Section 305.

"The said court shall possess the same powers and exercise the same jurisdiction as the District Courts of the United States, and shall be deemed a court of the United States . . ."

Title 28 U. S. C., Section 1349.

"The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock."

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PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners contended below that the District Court had jurisdiction of this action on two alternative grounds:

First, because the action is against the United States, and the District Court therefore has concurrent jurisdiction with the Court of Claims under the Tucker Act (Title 28, U.S.C. Section 1346(a)(2)).

Second, because even if the action is not regarded as one against the United States, the District Court has jurisdiction by virtue of Title 11 District of Columbia Code, Section

306; under that section the District Court has general jurisdiction over all actions in law or in equity in the District of Columbia, and the Municipal Court Act of 1942 (Title 11 District of Columbia Code, Section 755) divests the District Court of its jurisdiction only with respect to a limited class of "non-federal" and "purely local" matters, involving less than $3,000.00. The subject matter of this action is neither "non-federal" nor "purely local".

The Court of Appeals, nevertheless, held that the Municipal Court for the District of Columbia has exclusive jurisdiction.

I.

With respect to the first contention, namely, that this is a suit against the United States, the respondent, in the Brief in Opposition (page 6), states categorically that this action is not a suit against the United States, citing three opinions of this Court, dating from 1922 to 1930.

The Brief ignores entirely the opinion of this Court in *Cherry Cotton Mills, Inc.* v. *United States,* 327 U. S. 536, decided in 1946, and the decision of the Court of Appeals for the Second Circuit in *Defense Supplies Corporation* v. *United States Lines Co.,* 148 F. (2d) 311, decided in 1945.

II.

Conceding *arguendo* that the respondent is right and that this is not a suit against the United States, the Court of Appeals still erred in giving exclusive jurisdiction to the Municipal Court. As pointed out on pages 9-11 of the petition, the exclusive jurisdiction of the Municipal Court is limited to cases of a "non federal or purely local" character, irrespective of the identity of the defendant.*

* There being no "state court" in the District of Columbia, the U. S. District Court for the District of Columbia is both a federal court (like other district courts) as well as a "local court" (like other state courts). In this latter capacity it has general jurisdiction unlimited in amount and unrestricted as to parties in all actions, except insofar as this jurisdiction may have been carved away by the grant of exclusive jurisdiction in a narrowly limited field to the Municipal Court. Title 11 District of Columbia Code, Section 306 (see Appendix to this Reply Brief; *Fehlhaber Pile Co.* v. *Tennessee Valley Authority,* 155 F. (2d) 864 (App. D. C. 1946).

The Brief of the Respondent in Opposition wholly ignores this independent ground of error in the decision of the Court of Appeals and presents no answer whatever thereto.

The subject matter of the instant case is unanswerably purely federal and not local. It involves the interpretation of an Act of Congress of nation-wide application; it involves a fund collected by the defendant in the performance of a purely governmental war-time activity and on a nation-wide scale; the plaintiffs are not residents of the District and their relationship with the defendant arose out of transactions in the Commonwealth of Pennsylvania.

III.

If any technical objection is raised that petitioners' second contention above, (although fully argued in the District Court, in the Court of Appeals, and in the Petition), is not specifically included in the "Questions Presented" and "Specification of Errors to be Urged", the petition filed herein is amended by the inclusion of an additional "Questions Presented" No. 6, as follows:

> "(6) Does the Municipal Court for the District of Columbia have exclusive jurisdiction of an action in the District of Columbia against a corporate instrumentality of the United States (even though the action is not regarded as a suit against the United States) brought to interpret an Act of Congress of nation-wide application, to adjudicate rights to a fund collected by the defendant in the performance of a purely governmental war time activity and on a nation-wide scale, where the plaintiffs are not residents of the District of Columbia and their rights of action did not arise therein, and where the amount claimed by the plaintiffs is less than $3,000.00."

and by the inclusion of an additional "Specification of Errors to Be Urged," No. 3, as follows:

> "(3) That the Municipal Court for the District of Columbia has exclusive jurisdiction of an action in the

District of Columbia against a corporate instrumentality of the United States (even though the action is not regarded as a suit against the United States) brought to interpret an Act of Congress of nation-wide application, to adjudicate rights to a fund collected by the defendant in the performance of a purely governmental wartime activity and on a nation-wide scale, where the plaintiffs are not residents of the District of Columbia and their rights of action did not arise therein, and where the amount claimed by the plaintiffs is less than $3,000.00."

WHEREFORE your petitioners respectfully pray that a Writ of Certiorari to the Court of Appeals for the District of Columbia be granted.

Respectfully submitted,

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February 9, 1949.

APPENDIX.

Title 11 District of Columbia Code, Section 306.

Said court (except as otherwise provided in this title) shall have cognizance of all crimes and offenses committed within said district and of all cases in law and equity between parties, both or either oi which shall be resident or be found within said district and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 492

RUSSELL R. KNOWLES AND SYLVIA KNOWLES, ET AL., PETITIONERS

v.

WAR DAMAGE CORPORATION, AN INSTRUMENTALITY OF THE UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The United States District Court for the District of Columbia did not render an opinion. The opinion of the United States Court of Appeals for the District of Columbia (R. 34-39) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 4, 1948 (R. 40). The petition for writ of certiorari was filed on December, 31 1948. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether the courts below erred in holding that this action, involving admittedly less than $3,000, brought against a subsidiary of the Reconstruction Finance Corporation empowered to "sue and be sued in any court of competent jurisdiction", lay within the exclusive jurisdiction of the Municipal Court for the District of Columbia.

STATUTE INVOLVED

Section 4 of the Municipal Court Act of 1942, 56 Stat. 190, 192 (Sec. 11-755 of the District of Columbia Code) provides in part:

> (a) The Municipal Court for the District of Columbia, * * * shall have exclusive jurisdiction of civil actions, including counterclaims and crossclaims, in which the claimed value of personal property or the debt or damage claimed, exclusive of interest, attorneys' fees, protest fees, and costs, does not exceed the sum of $3,000 * * *.

STATEMENT

The respondent, War Damage Corporation,[1] was created on December 13, 1941 (7 Fed. Reg. 2531) by the Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act. (Act of January 22, 1932, c. 8, 47 Stat. 5, as amended by the Act of June 19, 1934, 48 Stat. 1105, 1108 and by the Act of June 10, 1941, 55

[1] Originally it was called the "War Insurance Corporation". 7 Fed. Reg. 2531. By amendment to its charter its name was changed on March 30, 1942 to "War Damage Corporation" 7 Fed. Reg. 2531-2532.

Stat. 248, 249). Its purpose as expressed in its charter was to provide insurance against damage to property through enemy attack. Its charter provided that it should have power "to sue and be sued in any court of competent jurisdiction" and that it should "in all other respects be possessed of the privileges and immunities that are conferred upon the Reconstruction Finance Corporation under the Reconstruction Finance Corporation Act, as amended."[2] Its authorized capital stock was $100,000,000 all of which was subscribed for by the Reconstruction Finance Corporation and was not transferable. 7 Fed. Reg. 2531.

Respondent provided insurance without compensation until July 1, 1942 when payment of an annual premium was required. 56 Stat. 175. On July 20, 1942, on payment of a $9 premium, respondent issued a policy to petitioners covering their home and automobile (R. 27-29).[3]

This action was instituted in the United States District Court for the District of Columbia by petitioners "on their own behalf * * * and on behalf of all others similarly situated" (R. 2). The complaint alleged that "The matter in controversy arises under the Laws of the United States, is a suit against a corporation organized under an Act of

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[2] The Reconstruction Finance Corporation has power "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal." Act of January 22, 1932, Sec. 4, 47 Stat. 6; Act of June 30, 1947, 61 Stat. 202, 15 U. S. C. 603.

[3] There is no allegation that a second premium was ever paid.

Congress, and jurisdiction is also vested in this Court by paragraphs 301 and 306 of Title 11 of the Code of Laws of the District of Columbia" (R. 2-3). It further alleged that the respondent has in its possession "sums of money amounting to $300,000,000 more or less which, under the insurance program * * * are the equitable property of the plaintiffs and of all other holders of policies issued by the defendant, in the nature of refundable unearned excess premiums" (R. 6). It prayed the court to enjoin the respondent from paying into the United States Treasury any of the surplus in its possession; to require an accounting; to impress a trust upon these funds for the pro rata benefit of all policyholders; to reform the insurance policies; and to direct the payment of the surplus funds, after deduction of necessary costs and expenses, to the policyholders in proportion to their interests (R. 7-8). Petitioners' insurance contract attached to the complaint showed that their interest was not more than $18 (R. 27-31).

On motion of the respondent made on the ground, among others, of lack of the requisite jurisdictional amount, the complaint was dismissed (R. 33). On appeal, the court below affirmed the judgment of the district court (R. 40). It held that petitioners could not aggregate their claims with those similarly situated to meet the jurisdictional minimum of $3,000 required for suit in the District Court and

that, by statute, exclusive jurisdiction lay with the Municipal Court. (R. 35-38)

ARGUMENT

Since 1909, the Municipal Court for the District of Columbia has enjoyed exclusive jurisdiction of certain classes of cases (Act of February 17, 1909, 35 Stat. 623, ch. 134; Act of March 3, 1921, 41 Stat. 1310, ch. 125, sec. 1). Most recently that jurisdiction has been enlarged by Section 4 of the Municipal Court Act of 1942 (56 Stat. 192, Sec. 11-755 of the District of Columbia Code) to include all "civil actions * * * in which the claimed value of personal property or the debt or damages claimed, exclusive of interest, attorneys' fees, protest fees, and costs, does not exceed the sum of $3,000." Both courts below held, correctly we submit, that this action involving as it does at most the sum of $18 lay within the exclusive jurisdiction of the Municipal Court and therefore outside that of the District Court. Petitioners' argument to the contrary is that this is a suit against the United States; that the United States District Court for the District of Columbia like the other district courts enjoys concurrent jurisdiction with the Court of Claims under the Tucker Act of suits against the United States;[4]

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[4] 28 U. S. C. 1346 (a) (2) formerly Section 24 (20) of the Judicial Code provides that (a) "The district courts shall have original jurisdiction, concurrent with the Court of Claims, of: * * * (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regu-

and that consequently the District Court had jurisdiction of this suit under that Act (Pet. pp. 7-9).

The fallacy in petitioners' argument lies in the assumption that all suits which affect the interests of the United States necessarily proceed under the Tucker Act. Sovereign immunity to suit may be waived by Congress, either (1) by statute, as in the Tucker Act, which authorizes direct suit against the United States, or (2) by providing for the conduct of government business by corporate agents, such as respondent, not endowed with the Government's immunity and thus amenable to suit. *United States* v. *Shaw*, 309 U. S. 495, 501; *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381. Suits against governmental corporations authorized "to sue and be sued" are not considered suits against the United States. *Olson* v. *United States Spruce Prod. Corp.*, 267 U. S. 462; *Sloan Shipyards* v. *U. S. Fleet Corporation*, 258 U. S. 549; *Merchant Fleet Corp.* v. *Harwood*, 281 U. S. 519. Even in the absence of statute, suit may be brought against such corporations in State courts, (*Sloan Shipyards* v. *U. S. Fleet Corp., supra; Olson* v. *United States, supra*) for tort (*Keifer & Keifer* v. *R. F. C., supra*, at pp.

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lation of an executive department, or upon any expressed or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." The District Court of the United States for the District of Columbia has the same powers and jurisdiction as the District Courts of the United States. See 11-305, District of Columbia Code.

394-397), and costs thereon allowed (*R. F. C.* v. *Menihan Corp.*, 312 U. S. 81).

The complaint in the instant case is addressed to the liberal rules which applies to suits against corporate agents and not to the limited consent given by the Tucker Act to suits against the United States. If this action were brought under the Tucker Act, petitioners could not secure the relief for which they pray since equitable decrees such as are sought here lie outside the jurisdiction of the courts under that Act. *United States* v. *Sherwood*, 312 U. S. 584, 588; *United States* v. *Jones*, 131 U. S. 1; *United States* v. *Turner*, 47 F. 2d 86 (C. A. 8). Nor is it clear that the complaint states a cause of action on a contract of the United States, express or implied in fact, a prerequisite for a Tucker Act suit. Cf. *U. S.* v. *Algoma Lumber Co.*, 305 U. S. 415, 419, 423; *Farm Sec. Adm.* v. *Herren*, 165 F. 2d 554, 562, 564-565 (C. A. 8), certiorari denied, 333 U. S. 875. Moreover, since the complaint on its face asks for disposition of a sum well in excess of the $10,000 maximum fixed by the Act, it probably lies outside the jurisdiction of the district court. Cf. *United States* v. *Sherwood, supra; Franklin* v. *United States*, 308 U. S. 516; *Otis Elevator Co.* v. *United States*, 18 F. Supp. 87 (S. D. N. Y.). Finally, since the Tucker Act authorizes suit only in the district courts (cf. *Minnesota* v. *United States*, 305 U. S. 382, 388), the Municipal Court would not have even

the concurrent jurisdiction which petitioners unquestioningly assume. (Pet. 5, 11.)

Petitioners' ability to proceed free from the limitations of the Tucker Act derives from the fact that respondent is specifically authorized "to sue and be sued." But while a governmental agency endowed with such authority "is not less amenable to judicial process than a private enterprise under like circumstances would be," it is not more so. *F. H. A.* v. *Burr,* 309 U. S. 242, 245, 250; *Matlaw Corp.* v. *War Damage Corp.,* 164 F. 2d 281 (C. A. 7), certiorari denied, 333 U. S. 863. Having elected to proceed against a governmental corporation as though it were a private enterprise, petitioners must accept the limitations inherent in the remedy they have elected. Since the district court clearly lacks jurisdiction in actions against private enterprises involving less than $3,000, the suit was properly dismissed. *Klepinger* v. *Rhodes,* 140 F. 2d 697 (C. A. D. C.), certiorari denied, 322 U. S. 734; *Rowe* v. *Nolan Finance Co.,* 142 F. 2d 93 (C. A. D. C.).

The provision of the Judicial Code (28 U. S. C. 1331) which prescribes the same jurisdictional minimum for the district courts, would equally compel this result. Indeed, the Court of Appeals for the Seventh Circuit has affirmed a judgment dismissing for failure to meet the $3,000 minimum an action against respondent in all respect identical

to this one. *Matlaw Corp.* v. *War Damage Corp.*, 164 F. 2d 281, certiorari denied, 333 U. S. 863.[5]

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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JANUARY 1949.

[5] As a subsidiary ground for granting certiorari, petitioners assert a conflict between the decision below and *United States* v. *Sheriff Motor Co.*, 63 F. Supp. 685 (D. D. C.) (Pet. 9-11). There the court sustained the right of the United States to bring an action for less than $3,000 in the district court because of the special statutory language giving that court cognizance of all actions "in which the United States shall be plaintiffs or complainants." Sec. 11-306 Dist. of Col. Code. Since in this action the United States is neither plaintiff nor complainant,the lack of relevance of this decision and of others like it is clear. *Ridgley* v. *United States*, 45 A. 2d 475 (Mun. Ct. App., D. C.); *Wittek* v. *United States*, 54 A. 2d 747 (Mun. Ct. App., D. C.); cf. *United States* v. *Weisenbloom*, 168 F. 2d 698 (C. A. 2).

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